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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/405,839	09/27/1999	SIMON WILLIAM JONATHAN BRIGHT	PM-263754	9963

7590 04/22/2002

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EXAMINER
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LACOURCIERE, KAREN A

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 04/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

EXAMINER	
ART UNIT	PAPER NUMBER
	21

DATE MAILED.

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run \_\_\_\_\_ or continues to run \_\_\_\_\_ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 04-02-02 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ☒ They raise new issues that would require further consideration and/or search. (See Note).
- c. ☐ They raise the issue of new matter. (See Note).
- d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: amendments broaden the scope to include functional equivalents of the recited structure as recited previously claims (see for example amend to claims 39-41) Amend to claim 27 completely changed characteristics of the claimed expression system. (Claim 46 has changed from plant cell survival to seed viability. All new limitations, as discussed above, would require a new search and consideration under 112, 1st paragraph.)

2. ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 27, 28, 38-50, 52

However:

☒ Applicant's response has overcome the following rejection(s): Applicant's arguments have overcome the need to provide the certified priority for GA9206157.2 as submitted in parent app. 08/31/783.

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because claim 46 is maintained as req. under 102(e) for reasons forward. Applicant argues limitations not in claim are in specification (constructs in Williams et al. "control" development, therefore, control whether seeds produced are capable of developing into mature plants)
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

note: claim 51 was previously cancelled in Amendment C, filed 07-13-01

ANDREW WANG  
PRIMARY EXAMINER

